



7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0270 and NRC-2019-0086]

Guidance for Changes, Tests, and Experiments

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide, issuance; draft regulatory guide, request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 of regulatory guide (RG) 1.187, “Guidance for Implementation of 10 CFR 50.59, ‘Changes, Tests, and Experiments.’” Concurrently the NRC is issuing for public comment DG-1356, which is proposed Revision 2 of RG 1.187.

DATES: Revision 1 to RG 1.187 is available on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Submit comments on DG-1356 **[NRC-2019-0086]** by **[INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER* NOTICE]**. Because of the extensive communication about NEI 96-07 Appendix D over the past year, the NRC believes that stakeholders will be able to submit comments quickly. In addition, the NRC seeks to issue DG-1356 as expeditiously as possible. Therefore, the NRC is publishing the DG-1356 with a 45-day comment period. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for

inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please refer to Docket ID **NRC-2016-0270** when contacting the NRC about the availability of information regarding RG 1.187, Revision 1. You may obtain publicly-available information related to RG 1.187, Revision 1, by using any of the following methods:

□**hFederal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for RG 1.187, Revision 1, by using Docket ID **NRC-2016-0270**. Address questions about NRC docket IDs in [regulations.gov](http://www.regulations.gov) to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

□**sNRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. Revision 1 to RG 1.187 and the regulatory analysis may be found in ADAMS under Accession Nos. ML17195A655 and ML16089A379 respectively.

Please refer to Docket ID **NRC-2019-0086** when contacting the NRC about DG-1356 (proposed RG 1.187, Revision 2). You may submit comments on DG-1356 (ADAMS Accession No. ML19045A435) by any of the following methods:

□y**Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID: **NRC-2019-0086**. Address questions about NRC docket IDs in [regulations.gov](http://www.regulations.gov) to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

□s**Mail comments to:** Office of Administration, Mail Stop: TWFN-7A06, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

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FOR FURTHER INFORMATION CONTACT: Philip McKenna, telephone: 301-415-0037; e-mail: Philip.McKenna@nrc.gov, or Stephen Burton, telephone: 301-415-0038; e-mail: Stephen.Burton@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC’s “Regulatory Guide” series. This series was developed to describe, and make available to the public, information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency’s regulations, techniques that the NRC staff uses in

evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

The purpose of issuing the final RG 1.187, Revision 1, concurrent with issuing DG-1356 for comment is to provide clarity for, and coordination of, NRC activities on guidance for implementing section 50.59 of title 10 of the *Code of Federal Regulations* (10 CFR).

Revision 1 of RG 1.187 was issued with a temporary identification of Draft Regulatory Guide, DG-1334. RG 1.187, Revision 1, endorses, with clarifications, Nuclear Energy Institute (NEI) 96-07, “Guidelines for 10 CFR 50.59 Evaluations,” which provides licensees with a method that the staff considers acceptable for use in complying with the Commission’s regulations on the process by which licensees, under certain conditions, may make changes to their facilities and procedures as described in the final safety analysis report (FSAR), and conduct tests or experiments not described in the FSAR, without prior NRC approval.

Concurrent with issuing Revision 1 of RG 1.187, the NRC is issuing DG-1356 for public comment under NRC docket number **NRC-2019-0086**. DG-1356 proposes additional guidance on digital instrumentation and control modifications. Specifically, DG-1356 endorses with exceptions and clarifications, NEI 96-07, Appendix D, Revision 0, “Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications.” If finalized, DG-1356 would become RG 1.187, Revision 2.

II. Additional Information: RG 1.187, Revision 1

The NRC published a notice of the availability of DG-1334 in the *Federal Register* on December 23, 2016 (81 FR 94275) for a 60-day public comment period. The

public comment period closed on February 21, 2017. Public comments on DG-1334 and the staff responses to the public comments are available in ADAMS under Accession No. ML18123A363.

The NRC is issuing RG 1.187, Revision 1, to implement lessons-learned from the NRC Report “Review of Lessons Learned from the San Onofre Steam Generator Tube Degradation Event,” dated March 6, 2015. (ADAMS Package Accession No. ML15062A125).

Specifically, RG 1.187, Revision 1, clarifies statements in Section 4.3.8 of NEI 96-07, Revision 1, regarding the definition in 10 CFR 50.59(a)(2) of “departure from a method of evaluation described in the FSAR (as updated).” Revision 1 also clarifies statements in Section 4.3.5 of NEI 96-07, Revision 1, regarding the meaning in 10 CFR 50.59(c)(2)(v) of “an accident of a different type than any previously evaluated in the final safety analysis report (as updated).” This revision of RG 1.187 explains how licensees should apply these NEI guidelines to ensure they are meeting the requirements of 10 CFR 50.59.

III. Additional Information: DG-1356 (draft RG 1.187, Revision 2)

The NRC is issuing for public comment a DG in the NRC’s “Regulatory Guide” series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC’s regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, titled, “Guidance for Implementation of 10 CFR 50.59, ‘Changes, Tests,

and Experiments,” temporarily identified by its task number, DG-1356, is proposed Revision 2 of RG 1.187. DG-1356 provides guidance on complying with the requirements of 10 CFR 50.59 when performing a digital instrumentation and controls (digital I&C) modification. Specifically, Nuclear Energy Institute (NEI) 96-07, Appendix D, Revision 0, “Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications,” was submitted to the NRC on November 30, 2018. As discussed in Section C of RG 1.187, DG-1356 endorses NEI 96-07 and finds that it provides an acceptable approach for the application of 10 CFR 50.59 guidance when conducting digital I&C modifications, with certain exceptions and clarifications.

DG-1356 is being issued for public comment to facilitate the Commission’s direction in the Staff Requirements Memorandum (SRM)-SECY-16-0070, “Staff Requirements-SECY-16-0070-Integrated Strategy to Modernize the Nuclear Regulatory Commission’s Digital Instrumentation and Control Regulatory Infrastructure” (ADAMS Accession No. ML16299A157). The NRC staff has engaged the public, NEI, and industry representatives to improve the guidance for applying 10 CFR 50.59 to digital I&C-related design modifications as part of a broader effort to modernize the regulatory infrastructure for digital I&C.

IV. Congressional Review Act

RG 1.187, Revision 1, is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

V. Backfitting and Issue Finality

Revision 1 of Regulatory Guide 1.187

Revision 1 of Regulatory Guide 1.187 clarifies statements in Section 4.3.8 and 4.3.5 of Nuclear Energy Institute (NEI) 96-07, Revision 1, “Guidelines for 10 CFR 50.59 Implementation” (ML003771157), which the NRC first endorsed in RG 1.187, Rev 0 (ML003759710). Issuance of RG 1.187, Revision 1, does not constitute backfitting under § 50.109 and is not otherwise inconsistent with issue finality under 10 CFR part 52. As discussed in the “Implementation” section of this RG, NRC staff does not intend or approve any imposition or backfitting of the guidance in this RG. If, in the future, the NRC seeks to impose a position in Revision 1 of RG 1.187 in a manner that does not provide issue finality as described in an applicable issue finality provision, then the NRC must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Draft regulatory guide DG-1356

Draft regulatory guide DG-1356, if finalized as Regulatory Guide 1.187, Revision 2, would endorse NEI 96-07, Appendix D, with conditions and clarifications. NEI 96-07, Appendix D, and the NRC staff’s conditions and clarifications, provide guidance on the application of the 10 CFR 50.59 change process to digital I&C modifications. The draft regulatory guide, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, “Licenses, Certifications and Approvals for Nuclear Power Plants.” As discussed in the “Implementation” section of this RG, NRC staff does not intend or approve any imposition or backfitting of the guidance in this RG. If, in the future, the NRC seeks to impose a position in Revision 2 of RG 1.187 in a manner that does not provide issue finality as described in an applicable issue finality provision, then

the NRC must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 23rd day of May, 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief,

Regulatory Guidance and Generic Issues Branch,

Division of Engineering,

Office of Nuclear Regulatory Research.

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